

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 CASE NO. 09-50026(REG)

4 - - - - - x

5 In the Matter of:

6

7 MOTORS LIQUIDATION COMPANY, et al,

8 f/k/a GENERAL MOTORS CORP, et al,

9

10 Debtors.

11 - - - - - x

12

13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

17 August 5, 2014

18 9:49 PM

19

20 B E F O R E :

21 HON. ROBERT GERBER

22 U.S. BANKRUPTCY JUDGE

23

24

25 ECRO - T. BROWN

1 HEARING Re Plaintiffs Lawrence and Celestine Elliott's No
2 Stay Pleading Pursuant to the Court's Scheduling Orders and
3 Motion for Order of Dismissal for lack of Subject Matter
4 Jurisdiction Pursuant to Bankr. R. 7012(B) and for related
5 relief (technical corrections to Doc. 12772 with exhibits
6 attached) (ECF 12774)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 Transcribed by: Sheila Orms

1 A P P E A R A N C E S :

2

3 KING & SPALDING

4 Attorneys for General Motors, LLC

5 1185 Avenue of the Americas

6 New York, NY 10036

7

8 BY: ARTHUR STINBERG, ESQ.

9 SCOTT DAVIDSON, ESQ.

10

11 KIRKLAND & ELLIS LLP

12 Attorneys for General Motors LLC

13 300 North LaSalle

14 Chicago, IL 60654

15

16 BY: RICHARD GODFREY, ESQ.

17

18 BROWN RUDNICK

19 Attorneys for (Unknown)

20

21 BY: EDWARD S. WEISFELNER, ESQ.

22

23

24

25

AKIN GUMP STRAUSS HAUER & FELD LLP

Attorneys for Ad Hoc Group of GUC Trust Unit Holders

One Byrant Park

New York, NY 10036

BY: NAOMI MOSS, ESQ.

HAGENS BERMAN SOBOL SHAPRIO LLP

Attorneys for (Unknown)

555 Fifth Avenue

Suite 1700

New York, NY 10017

BY: JASON A. ZWEIG, ESQ.

OTHERS PRESENT:

GARY PELLER for LAWRENCE AND CELESTINE ELLIOTT

TELEPHONIC APPEARANCES:

BRIANA L. CIONI, STUTZMAN & BROMBERG

KENT COLLIER, REORG RESEARCH, INC.

EPHRAIM DIAMOND, DK PARTNERS

JODI W. FLOWERS, MOTLEY RICE LLC

KIMBERLY G. GIANIS, CONTRARIAN CAPITAL MANAGEMENT

1 TELEPHONIC APPEARANCES, CONTD.:

2

3 ASHUTOSH HABBU, BARCLAYS PLC

4 BRENT HAZZARD, HAZZARD LAW, LLC

5 NAOMI MOSS, AKIN GUMP

6 LINDA SANDLER, BLOOMBERG LP

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 THE COURT: Good morning. Have seats.

3 All right. We're here on General Motors, Motors
4 Liquidation, and in particular, the effort by the Elliott
5 plaintiffs to proceed on their own part from the other 87
6 plaintiff groups, who are going to be subject to the
7 coordinated briefing schedule that we established in prior
8 proceedings here.

9 I want to get appearances, then I want everybody
10 to sit down because I have some preliminary comments.

11 MR. STEINBERG: Good morning, Your Honor, Arthur
12 Steinberg from -- and Scott Davidson from King & Spalding.

13 THE COURT: Okay. Thank you, Mr. Steinberg.

14 MR. GODFREY: Richard Godfrey from Kirkland, Your
15 Honor, good morning.

16 THE COURT: Okay. Good morning.

17 MR. PELLER: Gary Peller, Your Honor, I'm here for
18 Lawrence and Celestine Elliott.

19 THE COURT: All right, Professor Peller. And I
20 see Mr. Weisfelner for the other plaintiff groups, the
21 designated counsel. Your Honor --

22 MR. PELLER: We object to the other plaintiffs
23 being heard in this matter. We believe that this matter is
24 between GM and the Elliotts regarding whether the motion to
25 enforce is applicable at all against the Elliotts because

1 there's no subject matter jurisdiction over that matter, as
2 I think Your Honor is familiar.

3 THE COURT: Professor Peller --

4 MR. PELLER: We don't believe that any --

5 THE COURT: Professor Peller, you can't interrupt
6 me.

7 I know you don't practice in bankruptcy court, in
8 fact, you pride yourself on that, you put that in your
9 brief. Are you familiar with Section 1109 of the Bankruptcy
10 Code and the Second Circuit's decision in Term Loan Lenders
11 and Caldor?

12 MR. PELLER: I'd be glad to review that, Your
13 Honor, I don't --

14 THE COURT: Well --

15 MR. PELLER: -- know it off the top of my head.

16 THE COURT: -- you're not going to keep Mr.
17 Weisfelner from being heard. These are basic cases that
18 anybody who practices in Bankruptcy Code knows, and a
19 section of the Bankruptcy Code that is familiar to any
20 person who ever practices in bankruptcy court. Now, sit
21 down, please.

22 MR. PELLER: May I be heard?

23 THE COURT: I have my preliminary remarks.

24 MR. PELLER: Yes, Your Honor.

25 THE COURT: Professor Peller, I found your

1 submissions to the Court, and particularly, your letter of
2 July 28 to be patronizing and below the standards of
3 civility that I expect from lawyers appearing in this court,
4 and that I've seen from every other lawyer, plaintiff,
5 defendant alike up to today.

6 When you say with respect to your subject matter
7 jurisdiction contentions, as you did in your letter of July
8 28, that most lawyers learn this early on, and go on to
9 speak in the tone that characterized both your two letters
10 and your brief that inconsistent with the type of advocacy
11 that's acceptable not just in the bankruptcy court, but in
12 any federal court, they may also be a little bit
13 hypocritical, since most lawyers learn early on about the
14 importance of citation to controlling authority, and there
15 appear to be at least three decisions representing
16 controlling authority that you failed to cite or to
17 otherwise address, one by the U.S. Supreme Court, and two by
18 the Second Circuit, which inform the determination of any
19 bankruptcy judge who's asked to consider the scope and
20 enforceability of a prior bankruptcy court order.

21 When it's your turn, I want you to address the
22 Supreme Court's decision in Travelers and the Second
23 Circuit's decisions in Petrie Retail and Millennium Sea
24 Carriers.

25 I also want you to address the four published

1 decisions I've issued on the subject matter jurisdiction of
2 bankruptcy judges to enforce their earlier orders, and if
3 you can, the additional decisions by Judges Marrero,
4 Gropper, Drain, and Bernstein on point.

5 There are suggestions, repeated suggestions in
6 your motion papers that your clients are living under a sort
7 of Damocles under which I might be putting them in contempt.
8 I'm not looking to put anybody under a sort or otherwise for
9 contempt. I don't want to hold anybody, especially some
10 folks in their seventies in contempt.

11 The issue before me is whether your clients and
12 you will simply comply with orders that have already been
13 entered or that I may enter hereafter. So the issue then is
14 the extent, if any, to which this case is different from
15 Finiff (ph) and if you believe that what I think are nearly
16 a dozen cases on point, vis a vis bankruptcy judge's subject
17 matter jurisdiction to enforce their earlier orders, you can
18 help me by distinguishing those cases.

19 All right. Now, Professor Peller, I'll hear from
20 you.

21 (Pause)

22 MR. PELLER: Your Honor, we --

23 THE COURT: Oh, tell me if you prefer to be called
24 Professor Peller or Mr. Peller?

25 MR. PELLER: I prefer to be called Mr. Peller,

1 Georgetown University Law Center is not connected with this
2 litigation in any way, and I don't seek to trade off of my
3 honorific in any way, Your Honor.

4 THE COURT: Okay.

5 MR. PELLER: Before this Court is a motion to
6 dismiss for lack of subject matter jurisdiction, as you
7 know, Your Honor. I am not prepared, nor has GM, I believe
8 ever raised many of the cases that Your Honor cited to me,
9 or let me start off by saying that we meant no disrespect in
10 our July 28th letter.

11 As the Court knows, the parties -- an attorney
12 making a representation before the Court that is frivolous
13 is subject to sanctions. We would move for sanctions
14 because of the representations that Mr. Steinberg, because
15 they lack any basis in law.

16 The safe harbor provisions of Rule 11 do not
17 permit us time to notify Mr. Steinberg and then seek
18 sanctions from the Court. So we would invite the Court, sue
19 sponte as the Court has power under Rule 11 to issue those
20 sanctions, particularly if Mr. Steinberg plans on repeating
21 arguments that are well established and have no merit in
22 American law.

23 So we meant no disrespect. I believe that my tone
24 was proper. I understand the Court's disagreement and I
25 respect that.

1 The Court has asked us to justify what is
2 different about our case, the Elliotts' case than the other
3 case, and I'll get to that in a moment, Your Honor. I do
4 want to introduce to the Court, Lawrence Elliott, my client,
5 he's right here. He has come to the court today because the
6 Court expressed concern at the July 2nd hearing, as to the
7 motives for Mr. Elliott and Mrs. Elliott seeking to join
8 with others to sue GM. And if the Court wishes, Mr. Elliott
9 is here to explain those motives.

10 Okay. The plaintiffs believe this a pretty simple
11 case, Your Honor. GM came into this court seeking to
12 enforce its 2009 sale order this Court issued against the
13 Elliotts' lawsuit. It invoked the subject matter
14 jurisdiction of this court.

15 Once that subject matter jurisdiction is
16 challenged as the Elliotts have done repeatedly, GM has the
17 burden of establishing this Court's subject matter
18 jurisdiction. It has wholly failed to do so. It hasn't
19 said a single word except, because the Elliotts have a 2006
20 vehicle in which they claim injuries from, that this Court
21 simply has jurisdiction. I think that the papers establish
22 that the Second Circuit's decision in Manfield (ph) makes
23 very clear that simply the factual overlap between claims is
24 not sufficient to give this Court subject matter
25 jurisdiction. Rather the Court must examine the claims that

1 are asserted and see if those claims actually implicate in
2 any way the (indiscernible) of the debtor.

3 The Elliotts' claims do not, regardless of the
4 fact that they drive a 2006 Cobalt, and a 2006 Trail Blazer,
5 in which Mrs. Elliott has already experienced dangerous and
6 traumatizing moving stalls, they don't make any allegations
7 regarding their purchase, regarding warranties, or anything
8 of the sort.

9 They assert that GM breached independent non-
10 derivative, non-successor duties that it owed to the
11 Elliotts to tell the Elliotts that their cars were
12 dangerous, to not permit the Elliotts or lead the Elliotts
13 to transport their loved ones in cars that GM knew posed
14 eminent risks of death or serious bodily injury.

15 What's different about the Elliotts than the other
16 lawsuits that are perhaps properly before this Court, and we
17 express no opinion on the subject, is that the other
18 lawsuits have all, as far as I'm aware, and I'm read the
19 Finiff opinion and the Court based its opinion --

20 THE COURT: You've read which opinion?

21 MR. PELLER: Finiff.

22 THE COURT: Finiff in -- we're talking about --

23 MR. PELLER: Yes.

24 THE COURT: -- the opinion, the one that I orally
25 dictated on July 2nd and then I wrote on and published on

1 last week?

2 MR. PELLER: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. PELLER: Okay. Your Honor said that in that
5 -- in that case, the Finiff plaintiffs had asserted all
6 kinds of factual allegations about what Old GM did, I'm very
7 familiar with those allegations, and that the Finiff claims,
8 and the legal claim is what's important, Your Honor, not the
9 factual allegations, but the claims that they asserted were
10 claims at least in part, depending on the successor
11 liability, and the Finiff plaintiffs used the term successor
12 liability of New GM for the liabilities of Old GM.

13 We make no such claim and there's a good reason
14 for it, Your Honor. When we drafted the complaint for the
15 Elliotts, the Elliotts were driving dangerous cars that
16 posed eminent risks of death or serious bodily injury. We
17 knew, because we amended our complaint at the end of June,
18 after this Court had entered its May 16th scheduling order,
19 that if we implicated the jurisdiction of this court, all
20 courthouse doors in America would be closed to getting them
21 temporary and emergency relief, so they didn't have to
22 continue to transport their loved ones in these death traps.

23 That's why we --

24 THE COURT: Pause, please. Pause, please, Mr.
25 Peller.

1 New GM asserts in its response to your motion that
2 the Chevy -- the 2006 Chevy Cobalt was fixed pursuant to the
3 recall program. Is that matter now disputed?

4 MR. PELLER: Four days after the alleged repair,
5 Mrs. Elliott was driving the car and experienced a moving
6 stall that was unbelievably traumatizing late at night as
7 she returned home from work from her job, as a bus driver
8 late at night for the Metro Axis System in Washington, D.C.

9 She was stuck in the middle of the night with a
10 car that would not turn on, in a crime ridden area of the
11 Maryland -- of the D.C. suburbs. Yes, Your Honor, that
12 matter is in dispute.

13 THE COURT: Dispute that the recall repair was
14 satisfactory or dispute that it was made?

15 MR. PELLER: That it was satisfactory.

16 THE COURT: Okay. Continue.

17 MR. PELLER: So when we drafted our complaint, we
18 knew that the Elliotts needed temporary relief from the
19 unsafe vehicles, and so we draft our complaint with the idea
20 to not assert claims that may have been available to the
21 Elliotts based on breach of implied warranty, and the same
22 claims the other 87 lawsuits have made.

23 The other -- I'm not going to talk about the
24 decisions, you know, I don't know why they decided to assert
25 those claims. I assume that they didn't want leave any

1 money on the table. They want to assert any possible claim,
2 including those claims that might be paid by the dwindling
3 sums in the GU Trust, and whatever else they could find.

4 But we knew that if we triggered the jurisdiction
5 of this Court, this Court had already closed all courthouse
6 doors across America to those seeking emergency relief, and
7 we wanted to keep those doors open.

8 So it was more important to Celestine and Lawrence
9 Elliott to not assert every conceivable claim that they
10 might have, but rather to assert claims carefully, so they
11 would not trigger the jurisdiction of this Court and
12 therefore could keep open avenues for seeking emergency
13 relief.

14 That's what we did. GM nevertheless insists,
15 based on I think a premise that Your Honor has implicitly
16 already rejected in the Finiff ruling, that simply because
17 they're driving a 2006 vehicle, as I understand GM's
18 argument, GM has not just the protection of the legitimate
19 coverage of this Court's 2009 sale order, but actually
20 immunity, immunity from any wrong it might do so long as
21 that wrong is connected to a 2006 vehicle. That
22 proposition, Your Honor, is of course, absurd.

23 The 2009 sale order didn't give New GM, if that's
24 what Your Honor prefers to be referred to as, did not give
25 New GM an immunity to keep secret risks that plaintiffs all

1 over the country faced to keep secret from them, when New GM
2 failed to disclose those risks, (indiscernible) GM violated
3 duties that New GM owed to Lawrence and Celestine Elliott
4 and to the punitive class members that they seek to
5 represent.

6 In technical legal terms, Your Honor, as I'm sure
7 Your Honor is familiar in the Manville II case, excuse me,
8 because the Elliotts are third parties asserting claims
9 against a non-debtor that are based on independent non-
10 derivative, non-successor duties, and claiming that they've
11 suffered legally recognizable harm because of the breach of
12 those duties, this Court has no jurisdiction over their
13 claim.

14 It couldn't be clearer, and GM doesn't -- hasn't
15 said a word to the contrary that Manville II is not
16 controlling in this proceeding. All GM has said is, don't
17 let them jump out of line, Your Honor.

18 Well, the Elliotts don't belong in any line here.
19 They're not subject to this Court's case management
20 discipline.

21 The case management discipline is not to be
22 imposed upon parties or excuse me, a lawsuit that this Court
23 lacks jurisdiction over. It's just as simple as that, Your
24 Honor.

25 The grand stay power that Your Honor exercises

1 under the bankruptcy laws of the United States of America
2 have as their basic intent to protect an ailing debtor in
3 need of this Court's solicitude to help survive.

4 GM is not an ailing debtor asking for this Court's
5 protection in order to help it survive to give it some time
6 to regroup under the threat of creditors. We're not -- the
7 Elliotts are not creditors. And GM is not an ailing debtor.
8 It is a non-debtor. It is an accused criminal, accused in
9 our papers, of running a criminal racketeering enterprise to
10 conceal eminent risks to life and body from drivers of GM
11 vehicles. It doesn't deserve the solicitude of the --
12 extraordinary stay power that this Court traditionally
13 exercises.

14 Let me move now to the particular Section 105
15 points that Your Honor has raised.

16 THE COURT: Well, I'm not talking about 105
17 points. When you talk about the subject matter jurisdiction
18 of the bankruptcy court, you normally start with 28 U.S.C.
19 1334. Would you focus, please on 1334 and explain to me why
20 you believe that it's the relating to, as contrasted to the
21 rising end prong of 1334 that you consider so important?

22 MR. PELLER: The -- I think our papers are clear
23 on this, Your Honor. And as I said in my July 23rd letter
24 to the Court, GM has not contested any of these points. I
25 appreciate Your Honor's concern and Your Honor's bringing

1 cases to our attention that GM failed to cite, and I
2 understand that, you know, Your Honor's concern to follow
3 the law, but the law is really clear.

4 1334 requires that in order for this Court to have
5 subject matter jurisdiction over the Elliott's lawsuit, the
6 lawsuit must be related to something that this Court
7 actually does have subject matter jurisdiction over.

8 This Court has subject matter jurisdiction, of
9 course, to enforce its 2009 sale order and injunction. The
10 problem, however, for the reasons that I've just said, Your
11 Honor, is that none, not one of the claims asserted by
12 Lawrence and Celestine Elliott have anything to do with that
13 sale order.

14 Section 105, your power, Your Honor, to interpret
15 your own orders, and to interpret that sale order, of
16 course, as the Court also in Manville made clear, does not
17 expand your original subject matter jurisdiction. If the
18 Elliotts' claims do not implicate the sale order, this Court
19 lacks jurisdiction over them, and power to order the
20 Elliotts in any way whatsoever.

21 Would you like me to continue, Your Honor?

22 THE COURT: I'd like you to finish your argument,
23 Mr. Peller.

24 MR. PELLER: You asked that we distinguish the
25 case from the other 87 cases, and I believe I've said it as

1 clearly as I can. The arguments are all the same, whether
2 they're 1334 arguments, or whether they're arguments as to
3 whether the claims relate to the sale order, or whether you
4 have the jurisdiction under Section 105 to interpret your
5 own order, they all come down to the same thing.

6 The Second Circuit in Manville has made clear,
7 that the bankruptcy court must exercise extra care when a
8 non-debtor like GM is coming into this court seeking this
9 Court's protection and solicitude. This Court should not
10 act like it's a typical proceeding involving a debtor where
11 you gather together all the creditors and keep each one from
12 jumping the line.

13 We're not seeking to jump any line, we're not in
14 this line. But if the Elliotts were seeking to jump a line,
15 Your Honor, the reason they're seeking to jump the line, the
16 reason they're different from all the other lawsuits, is
17 they're not willing to put aside for months the safety of
18 the drivers of GM vehicles across America until this Court
19 might at some point decide the threshold issues.

20 Subject matter jurisdiction, Your Honor, is a
21 predicate for any exercise of any power over the Elliotts'
22 lawsuit. If this Court lacks subject matter jurisdiction,
23 there is no doubt that this Court is obliged to let the
24 Elliotts' lawsuit go and dismiss the lawsuit.

25 The Elliotts have challenged the jurisdiction. GM

1 has come in saying that as long as they're driving a 2006
2 car, that's it. The Second Circuit's really clear that
3 that's not enough, you've got to examine the claims.

4 This Court did examine the claims in its Finiff
5 ruling, and found that those claims did implicate successor
6 liability. With all due respect, if the Court would do the
7 same for the Elliotts the Court will find that not one of
8 the Elliotts' claims implicate the bankruptcy court
9 jurisdiction.

10 What's different is that the Elliotts decided not
11 to assert all claims that they might have asserted, but
12 certainly no one can claim that this Court acquires
13 jurisdiction because of claims that the Elliotts might have,
14 but did not assert.

15 Your Honor, if I could reserve any remaining time
16 that you wish to hear from us to respond to GM's comments.

17 THE COURT: Sure. It's my practice to allow
18 people to reply and also to surreply though in the latter
19 two cases only with respect to new stuff.

20 Mr. Steinberg --

21 MR. PELLER: May I then continue for one moment,
22 Your Honor?

23 THE COURT: Yes, sure.

24 MR. PELLER: Because Your Honor asked me to speak
25 to cases that I will admit that I'm not familiar with, but

1 I'll be glad to submit papers, as soon as I get the
2 transcript and can correctly locate those cases to respond
3 to Your Honor. But to the extent that I'm familiar with the
4 cases, in particular, Your Honor's prior decisions, there's
5 no decision that I'm aware of, Your Honor, that contradicts
6 the arguments that I have made here this morning.

7 THE COURT: All right. Thank you. Mr. Steinberg.

8 MR. STEINBERG: Your Honor, I didn't realize that
9 I was subject to a potential sanction motion, so I was glad
10 to hear that first part of that as the hearing.

11 Mr. Peller says --

12 THE COURT: Pause please, Mr. Steinberg. Both to
13 you and to Mr. Peller, and to Mr. Elliott and his wife, I'm
14 not looking to sanction anybody. I'm not looking to hold
15 anybody in contempt. I'm just trying to address the extent
16 to which my prior orders should be complied with, and to
17 give people a chance to do that, and to give lawyers who
18 know a little bit more about bankruptcy litigation the
19 opportunity to duke it out with you. Continue, please.

20 MR. STEINBERG: Your Honor, Mr. Peller said that
21 the decisions that Your Honor have cited were unfamiliar
22 with him, had not been cited by New General Motors in its
23 papers at all. I call your attention to our motion to
24 enforce, paragraphs 25 and 26 and I'll read them into the
25 record, although they're a little lengthy.

1 Paragraph 25, "It is well settled that a
2 bankruptcy court plainly has jurisdiction to interpret and
3 enforce its own prior orders." The citation there is to
4 Travelers and to Wilshire Courtyard, which is a Ninth
5 Circuit decision with a parenthetical citation to
6 Continental Airlines, which is a bankruptcy court decision
7 in Delaware, a citation to U.S. Lines, which is a Southern
8 District bankruptcy case, citation to Chateaugay, which is
9 another Southern District case.

10 Paragraph 26 says, "Consistent with these
11 authorities, this Court retains subject matter jurisdiction
12 to enforce its sale order and injunction. Indeed this is
13 not the first time that this Court has asked to be asked to
14 enforce its injunction against plaintiffs improperly seeking
15 to sue New GM for Old GM's retained liabilities." And
16 there's a citation to Castillo, to Trusky (ph), and then
17 lengthy quotes from those decisions where Your Honor had
18 specifically discussed your ability and your jurisdiction to
19 enforce your own orders.

20 So I start off with saying that to the extent that
21 Mr. Peller said that nothing has ever been cited, and that
22 we have not cited those cases, we indeed have cited these
23 cases from the very outset.

24 In fact, the two scheduling orders that Your Honor
25 entered to decide threshold issues is predicated on Your

1 Honor's jurisdiction to enforce your own order. Something
2 that was decided with the approbation of all the identified
3 counsel, including the designated counsel and the second
4 July 2 hearing scheduling conference which discussed how
5 this matter would go forward, was done in the presence of
6 Elliotts' counsel. And Elliotts' counsel never said a word
7 about Your Honor's subject matter jurisdiction. And we had
8 an argument on the Elliott motion on July 2 as well, too,
9 and the jurisdictional issue was never mentioned before.

10 So I wanted to be able to point that out. The
11 notion that they amended their complaint to purposely
12 identify how to avoid coming to this bankruptcy court for
13 the concern that there would be no other court that they can
14 go to if they had a safety issue, well clearly there was
15 nothing that prevented them from coming to this court, if
16 they thought they had a safety issue.

17 And certainly they have threatened New GM probably
18 every day for two weeks, that they were going to another
19 court to do that, and they have never done that.

20 And they -- I think he's basically admitted that
21 one of the reasons why this complaint was amended
22 notwithstanding that Mr. Elliott had signed a pro se stay
23 stipulation, a voluntarily stay stipulation, was that he
24 wanted to amend the complaint not to clarify the ramblings
25 of a pro se plaintiff, but he wanted to craft a complaint

1 different than the other complaints that had been filed in
2 this case against New GM, in order to purposely avoid the
3 jurisdiction of this Court.

4 By the way, the issue about whether the ignition
5 switch was replaced in the Elliotts' cars, the answer to
6 Your Honor is yes, they did complain about the circumstance.
7 And without trying to get too much into a he said/she said
8 for at least a week, we've been trying to understand the
9 circumstances of it, and we've offered to pick up the car
10 from the Elliotts yesterday to examine the circumstances,
11 but they said that they had a court hearing today, and would
12 have to wait when they came back from the court hearing.

13 So New GM was trying to address whatever the
14 concerns are, to see whether it was related to something
15 else, or to examine the car overall.

16 Your Honor, this case is exactly the case where
17 Your Honor has rendered its decision. Like the Finiff
18 plaintiffs, the Elliotts claims that they only are asserting
19 post 363 sale claims, which are not retained liabilities;
20 and therefore, there was no need for the Court to deal with
21 these issues. And that argument did not prevail with Finiff
22 and should not prevail here.

23 And like the Finiff plaintiffs, the Elliotts
24 claims that they are uniquely situated. That argument also
25 did not prevail.

1 Fairly many of the plaintiffs in the approximate
2 90 actions that have been filed against New GM --

3 THE COURT: Pause, please, Mr. Steinberg. What's
4 the current count if you know?

5 MR. STEINBERG: I've seen --

6 THE COURT: Is it more than the 88 as of the time
7 that I dealt with Finiff?

8 MR. STEINBERG: It is more than the 88, Your
9 Honor, but if Your Honor -- if it would be helpful for Your
10 Honor when we'll get back, we'll count up the numbers on our
11 schedule.

12 THE COURT: I don't think the incremental number
13 makes a whole lot of difference. Continue, please.

14 MR. STEINBERG: They are not uniquely situated.
15 Many of the other plaintiffs have asserted economic loss
16 claims emanating from the alleged fact that New GM should
17 have instituted the ignition switch recall earlier.

18 So all of those claims are in that type of claim,
19 which is the predicate of what the Elliotts have filed have
20 been in many, many of the complaints.

21 And like certain of the Finiff plaintiffs, the
22 Elliotts have made claims on their Old GM vehicle, and have
23 premised New GM's knowledge based on facts acquired while
24 working at Old GM. This report properly held that those
25 facts by itself are outcome determinative as to whether it

1 had jurisdiction to determine the issue.

2 Those facts are sufficient to trigger the
3 threshold applicability of the sale order and the injunction
4 provisions.

5 Paragraph 71 of the sale order provides that the
6 bankruptcy court will have exclusive jurisdiction to enforce
7 the sale order and the sale agreement to a) resolve disputes
8 arising under or related to the sale agreement; b) interpret
9 and enforce the sale order; and c) to protect purchaser, the
10 purchaser against retained liabilities.

11 The Elliotts are arguing that they're asserting
12 claims against New GM which they know New GM will claim or
13 retain liabilities. That by itself triggers the injunction
14 provision, and the Court's exclusive jurisdiction over the
15 issue.

16 The Elliotts do not get to assume that they are
17 right, so they can ignore the Court's sale order and
18 injunction. The teachings of the Seller Tech (ph) Supreme
19 Court decision case is that when it's implicated in a prior
20 decision, you have to start with the Court that rendered the
21 ruling.

22 That is not to say that if Your Honor determined
23 that these were not retained liabilities or were liabilities
24 that New GM had, that it would then determine what the
25 actual claim would be.

1 Once Your Honor determines whether it's an assumed
2 liability or a retained liability, then Your Honor, then the
3 decision tree will be that if it's an assumed liability, the
4 MDL Court will decide this issue. And if it's a retained
5 liability, then there will be no claim against New GM.
6 That's Your Honor's decision, it's not to determine the
7 merits of the claim itself, other than to determine whether
8 it's an assumed liability or retained liability.

9 This Court in Finiff properly noted that it needed
10 to minimize piecemeal rulings at this juncture. Since the
11 designated counsel will want to weigh in on the same issues
12 raised by the Finiff plaintiffs, and that same rationale
13 applies to the Elliott no stay motion.

14 The issue of whether something is an assumed
15 liability or retained liability is a threshold issue that
16 will be determined by this Court. The Court, as a proper
17 exercise of its case management, needs to have a coordinated
18 disposition of that issue. One plaintiff should not be
19 allowed to go it alone ahead of the others. One plaintiff
20 should not be allowed to alter the coordinated procedures to
21 determine this issue that the Court has established on two
22 scheduling conferences on notice to the Elliotts. The last
23 one attended by Elliotts' counsel and with the approval of
24 substantially all of the other parties in interest.

25 As a practical reality, New GM brief on the

1 threshold issue as to whether it is an assumed liability or
2 retained liability asserted by the Elliotts and by all of
3 the other plaintiffs is due in 17 days. So this is not
4 something that is necessarily back-burnered.

5 And I will note that in connection with this
6 hearing, at 4 o'clock yesterday, I got a request from Mr.
7 Peller to adjourn this hearing, which we refused to do, so
8 that the notion that they needed to get this thing promptly
9 determined right away, they had itself asked to adjourn this
10 hearing for the next scheduling conference.

11 The threshold issue of whether something is a
12 retained liability to be asserted against New GM should be
13 presented to the Court so that it's binding on all the
14 plaintiffs that have raised the issue, not just the
15 Elliotts.

16 Second, practical point. The Elliotts have agreed
17 that the ignition switch claims that are asserted in their
18 action should be transferred to the MDL before Judge Furman.
19 When we were last here on July 2, that issue had not been
20 determined. The Elliotts had not taken a position, and they
21 have agreed that there should be a partial transfer. New GM
22 believes that it should be a full transfer, but at least the
23 ignition switch claims are now before Judge Furman.

24 Their no stay motion is really not about getting
25 ahead of the other plaintiffs. It is really a transparent

1 effort to have the issue of whether their claims are
2 retained liabilities or not to be heard by someone other
3 than Your Honor.

4 The Elliotts' subject matter jurisdiction argument
5 is nothing more than a reformulation of the assumed
6 liability, retained liability issue. The Elliotts' argument
7 assumes that they won the issue, and that therefore, this
8 Court has no jurisdiction to determine their claim because
9 it was not a retained liability. But that begs the question
10 as to decides whether it's a retained liability.

11 The sale order reserved exclusive jurisdiction in
12 this Court to determine that issue, and the Court's
13 scheduling orders and substantially all of the other
14 plaintiffs have recognized that it will be this Court to
15 first determine that threshold issue.

16 The Elliotts were in court on July 2, and
17 apologized to the Court for not first filing a no stay
18 pleading in this court, instead of amending their complaint
19 in the DC action. They never raised the Court's
20 jurisdiction to determine issues as part of that argument.
21 It is now well too convenient as part of their argument now
22 to raise it on their own motion.

23 The Elliotts have used the no subject matter
24 jurisdiction argument, as the reason why they can flout this
25 Court's order, and not withdrawing the motion to amend the

1 complaint in the D.C. court. In essence, they argued that
2 they are not bound to follow the Court's directive because
3 acting as their own appellate court, they determined it was
4 not proper to enter any order against them.

5 They have used the no subject matter jurisdiction
6 argument before Judge Furman in a letter that they sent to
7 Judge Furman yesterday. They make the unsupported claim
8 that the bankruptcy court lacked subject matter jurisdiction
9 over their claims, "under applicable Second Circuit
10 authority that no party disputes."

11 Well, I think it should be obvious today that we
12 dispute this no subject matter jurisdiction argument, and
13 the authority that you've cited in your papers.

14 They characterize this Court's directive to them
15 to withdraw their motion to amend in the D.C. Court as "an
16 aggressive exercise by the bankruptcy court of its stay
17 power."

18 And what was the purpose of this letter to Judge
19 Furman? It was to assert that they were differently
20 situated than the other plaintiffs because they, unlike the
21 other plaintiffs, purposely did not assert claims against
22 Old GM, and therefore, they should have a greater leadership
23 role in the MDL.

24 And that's a telling admission by the Elliotts.
25 They told Judge Furman they were differently situated

1 because although their underlying facts were essentially the
2 same as the other plaintiffs' claims, they knew how to dress
3 up their claims differently. They knew how to as to avoid
4 invoking the jurisdiction of the bankruptcy court. A
5 classic case of form over substance.

6 They told Judge Furman that they drafted their
7 amended complaint, unlike the other plaintiffs, who
8 acknowledge of GM's bankruptcy contentions, and took care
9 not to trigger the bankruptcy forum. In essence, they went
10 to school on the earlier filed complaints filed by the other
11 plaintiffs. That appears to be the real reason why they
12 wanted to amend the Elliotts' pro se complaint, which had
13 the same alleged flaws as the other plaintiffs' complaints.

14 The purpose of the amendment was simply not to
15 clarify a pro se pleading. It was their attempt to end run
16 this Court's jurisdiction.

17 But without getting into the substance because
18 that is what our brief on the retained liability threshold
19 issue will be about, our moving papers on the motion to
20 enforce did cite to provisions of the sale order which are
21 worth repeating now.

22 Paragraph 46 of the sale order states, "that
23 except for assumed liabilities, which New GM's position is
24 that it's the glove box warranty, the post-sale accidents
25 and the lemon law claims, except for those three categories,

1 New GM shall not have any liability for any claim that arose
2 before the closing date that relates to the production of
3 vehicles prior to the closing date."

4 In our view, our interpretation what we will be
5 arguing before Your Honor, is that an Old GM vehicle that
6 does not fit within the category of a glove box warranty
7 claim, a post-sale accident claim, or a lemon law claim, and
8 the Elliotts have not asserted any of those claims, are
9 something that is a retained liability.

10 The Elliotts have an Old GM vehicle, and state
11 they have claims against Old GM, and they choose not to
12 assert it here. We think that the paragraph 46 of the sale
13 order is implicated of what the Elliotts have done.

14 Paragraph 8 of the sale order says "that any
15 person holding a claim whether it's matured or unmatured,
16 contingent or noncontingent, arising under or out of, in
17 connection with, or in any way related to Old GM, the
18 purchased assets, or the operation of the purchased assets
19 prior to the closing are forever barred from asserting those
20 claims against New GM."

21 The Elliotts have tried to say they're different
22 from the other plaintiffs, but they didn't do the perfect
23 job. So if you look at paragraph 9 of the Elliotts'
24 complaint, it says that "New GM's actions caused a
25 substantial diminution of the value of their vehicles."

1 New GM will argue in its papers that this type of
2 assertion is measured from the point of sale. That's the
3 diminution in value, from when they originally bought the
4 car, and that implicates Old GM, not New GM.

5 Paragraph 92 of their complaint states that the
6 Elliotts relied on New GM to identify latent defects. New
7 GM will argue in its papers that latent defects of a car
8 manufactured and sold by Old GM is a retained liability of
9 Old GM.

10 The Elliotts have asserted common law fraud count,
11 seeking the diminution damages. Again, in our view, that's
12 the difference between the vehicle as represented and the
13 value when sold by Old GM. That is an Old GM issue.

14 And the D.C. Consumer Protection statute which is
15 cited by the Elliotts is a claim based on a statute which
16 deals with trade practices arising from the consumer
17 merchant relationship. We will be arguing in our brief that
18 it applies to merchants who provide the consumers with goods
19 and services. That means the point of sale. That means Old
20 GM.

21 THE COURT: Pause, please, Mr. Steinberg. I
22 assume you're saying this not because you're asking me to be
23 persuaded by the underlying merit of what you're saying, but
24 simply to say that this overlaps with what you're going to
25 be arguing with Mr. Weisfelner and Mr. Enselbuck and Mr.

1 Wasserman (ph)?

2 MR. STEINBERG: That is correct, Your Honor. It's
3 to illustrate that this -- we believe that these issues in
4 their own complaint implicated retain liabilities. We want
5 to have the opportunity to argue it in a coordinated
6 fashion, so that whatever Your Honor rules will be binding
7 on not just the Elliotts but everybody else, and this will
8 not be a stare decisis issue, it will be a collateral
9 estoppel issue. And this train has left the station and the
10 first brief is going to be filed in 17 days.

11 In the end, the Elliotts are no different than the
12 Finiff plaintiffs. They're no different from any of the
13 other plaintiffs. Their claims implicate the sale order,
14 and they are embowed therefore by the injunction they're in.

15 Their arguments can be presented to the Court, and
16 the Court will consider them as part of the threshold
17 issues. And the Court will make the determination of those
18 claims, but that's when it should happen not before.

19 There is one other thing that I will say, Your
20 Honor, as sort of a general category. There was a lot of
21 heated rhetoric by Mr. Peller about criminal enterprises and
22 other things where there were pejorative terms used. I will
23 not try to engage on a point-by-point basis, other than to
24 say that New GM refutes that, and will put that in their
25 papers if they are raised in the briefing. Thank you.

1 THE COURT: Okay. Mr. Weisfelner, you have a
2 right under 1109 in Caldor to be heard if you want to be.

3 MR. WEISFELNER: Your Honor, I think discretion --

4 THE COURT: Just pull a mic close to you for
5 whatever you say or as little as you say even.

6 MR. WEISFELNER: Your Honor, I think discretion
7 being the very part of valor suggests that we advised Your
8 Honor that we're here in an observatory fashion only.

9 I would point out, however, that I think GM has it
10 absolutely wrong when it draws the distinction between
11 retained liabilities and assumed liabilities.

12 As I think Second Circuit authority, Travelers,
13 Quigley made crystal clear, and as I think Mr. Peller is
14 arguing, although I think arguing out of turn, this Court
15 didn't have, couldn't have protected New GM from actions
16 that New GM took or violations that New GM is responsible
17 for.

18 The question isn't whether Your Honor has subject
19 matter jurisdiction, we would assert in the first instance
20 with regard to actionable conduct by New GM, we agree with
21 Mr. Peller in terms of the limitations of the bankruptcy
22 court's jurisdiction in that regard. Where we seem to part
23 ways is over the question of whether or not Your Honor's
24 exclusive jurisdiction to interpret your own sale order
25 requires preliminary proceedings here before one reaches

1 that second question.

2 Your Honor, I have nothing else to add.

3 THE COURT: Okay. Mr. Peller, reply.

4 MR. PELLER: Many new issues were raised, and so
5 I'm just going to treat them in the order that I have
6 written them down. I'm sorry if it's not the order they
7 were stated, Your Honor.

8 The question as to whether the Elliotts can amend
9 their complaint is over. Judge Jackson granted their
10 amendment. Judge Jackson's order very clearly expressed
11 concern with this Court's interference with Judge Jackson's
12 docket by purporting to require the Elliotts to withdraw
13 from that court's pending active consideration a pleading
14 before that Court.

15 With respect to the question of it retained and
16 assumed liabilities, Your Honor, our letter of July 23rd
17 makes clear that GM is operating a little shell game in
18 argument here. There aren't just two kinds of claims here.
19 The claims that are either retained by Old GM or those
20 assumed by New GM. There's three categories of claims.

21 The first category is those claims under the sale
22 order that Old GM retained. The second category is the
23 claims under the sale older that New GM assumed, the lemon
24 law claims and what have you. The third category of claims,
25 and those are exclusively and solely the claims that the

1 Elliotts are asserting.

2 Those claims are based on independent, non-
3 derivative duties that New GM owed to plaintiffs not to
4 conceal information material to the issue of whether they
5 would get in their cars in the morning and drive them. New
6 GM knew those cars were eminently and unreasonably dangerous
7 and didn't tell anybody.

8 The argument that Mr. Steinberg has presented to
9 the Court today, the implications are, I'll say it a little
10 differently than Mr. Weisfelner, the implications are that
11 New GM is claiming an immunity for whatever wrongdoing it
12 might do, so long as the wrongdoing occurs with respect to a
13 2006 vehicle.

14 Can New GM put a bomb in a vehicle, a 2006
15 vehicle, blow people up? According to Mr. Steinberg's
16 argument, we'll have to refer to the 2009 sale order and see
17 if New GM -- if that would be assumed or retained liability
18 of New GM.

19 Your Honor, the argument is absurd.

20 THE COURT: Pause, please, Mr. Peller. You're
21 saying if a New GM car blows up now, you're saying what?

22 MR. PELLER: I'm saying that --

23 THE COURT: I thought that New GM had always
24 acknowledged that if a GM car blows up now, it's addressing
25 that claim.

1 MR. PELLER: If there's personal injury, Your
2 Honor, not if there's property damage or what they call
3 economic loss, which we understand more properly as claims
4 asserted on behalf of those lucky enough not yet to have
5 been killed or injured by the dangers that New GM has hidden
6 from the American public.

7 THE COURT: Did you read my Deutsche opinion, Mr.
8 Peller?

9 MR. PELLER: I'm sorry, Your Honor. I didn't hear
10 you, Your Honor.

11 THE COURT: In my GM Deutsche opinion when I
12 talked about what incidents means in the context of post-
13 sale events?

14 MR. PELLER: I'm not recalling --

15 THE COURT: It's where I said, the words of my
16 opinion, we'll deal with it most directly as would the words
17 of the sale order in the sale agreement, but I could swear
18 the issue was that since in Deutsche was that since New GM
19 had agreed to address claims for accidents or incidents
20 after the sale date, and if a car blew up after the sale
21 date, that was an example of an incident, that was something
22 that New GM was prepared to address.

23 MR. PELLER: Your Honor, this is not about any
24 assumed liabilities or anything under the sale order. We're
25 talking about -- I was just trying to give an example of an

1 independent duty that New GM has not to commit wrongdoing
2 vis a vis people. And they can't -- they can't gain
3 immunity if they just happen to do the wrongdoing --

4 THE COURT: I understand that --

5 MR. PELLER: -- through a two thousand --

6 THE COURT: -- argument. Forgive me. I
7 understand that argument. I think Mr. Weisfelner was
8 reserving the right to make that argument too or giving me a
9 preview that I would be hearing from it from him.

10 The issue before me is the extent to which I
11 should let you argue it instead of people like Mr.
12 Weisfelner who know a little bit more about the case and a
13 little bit more about bankruptcy law.

14 MR. PELLER: I appreciate the advice, Your Honor.
15 I'd like to continue my argument.

16 THE COURT: Go ahead.

17 MR. PELLER: With respect to the adjournment, we
18 asked for an adjournment because on August 11th, Judge
19 Furman will be considering whether to let a -- discovery
20 proceed in the consolidated proceedings before him. GM is
21 arguing that the -- this Court's stays prevent that from
22 proceeding and Judge Furman will be hearing that argument on
23 August 11th.

24 We thought it might be advisable and this Court
25 might wish, given comity concerns, to hear from Judge Furman

1 before it proceeded on this matter. That was the reason we
2 asked for an adjournment. GM opposed it.

3 The question of Section 9 of the sale order,
4 diminution of value, Mr. Steinberg argues that because we're
5 asking for a diminution of value we must be implicating the
6 retained liabilities of Old GM. But that's not true, Your
7 Honor. That's not the claim we're making.

8 GM is not permitted to say well, they could have
9 claimed this, and we think they're claiming this, and
10 therefore, you have subject matter over the jurisdiction
11 that GM -- it claims that GM asserts that we're asserting.
12 That's not the claims we're asserting.

13 The diminution in value is due to New GM, as the
14 complaint clearly said, since October 19th or what have you
15 of 2009, when New GM came into existence, the actions that
16 New GM took to diminish the value, interfere with the use,
17 impose increased risks, and other harm that New GM has
18 caused the Elliotts and other plaintiffs.

19 The question -- the assertion that the Elliotts'
20 claims are just like the claims of the other plaintiffs is,
21 I think at best, confusing, Your Honor. The Elliotts make
22 solely and exclusively claims against New GM based on
23 independent duties that New GM owed that are not derivative
24 of or successor to duties that Old GM owed.

25 It is true that many of the other and I would

1 venture to say maybe all of the other ones also make such
2 claims, but they make such claims in combination with
3 pleadings that arguably implicate the retained liabilities
4 of Old GM.

5 Because this Court may have related to
6 jurisdiction under Section 1334 over the claims with respect
7 to retained liability, there is possibly -- again, we
8 express no opinion on the matter. There's possibly
9 supplemental jurisdiction over the claims that this Court
10 would otherwise have no jurisdiction over were they the only
11 claims.

12 The question of this Court's authority under the
13 sale order to interpret its own order is well settled. I
14 believe that these are the responsive and controlling
15 precedents, Your Honor. I again apologize, the Elliotts are
16 low income elderly and not able to retain specialized
17 bankruptcy counsel. We're doing the best we can, Your
18 Honor, and we appreciate your patience.

19 While jurisdiction to enforce the sale order may
20 uncontroversially be exercised under Section 5, it's clear
21 that the broad powers to enforce the Court's own order, is
22 itself, and I'm quoting now, limited by the jurisdictional
23 limits of the order sought to be enforced. That's the
24 Fairfield Aircraft (ph) case, it's the In Manner Mooney (ph)
25 case and as Mr. Weisfelner mentioned, the Quigley case

1 discusses this issue at length and makes that clear.

2 This Court can't expand its subject matter
3 jurisdiction by claiming to have to consider whether
4 independent non-derivative claims might implicate the sale
5 order. Of course it can.

6 As we mentioned earlier, the Manville II Court has
7 made ultra-clear that this Court is to use special care when
8 confronted with a non-debtor like GM who seeks the Court's
9 protection, given the risk of abuse of the Court's stay
10 power that plaintiffs will repeat and we believe has
11 occurred in the proceedings here. Excuse me,
12 (indiscernible).

13 So the Elliotts' lawsuit is different than the
14 other lawsuits. We didn't go for all the money on the
15 table. We didn't assert every claim possible. We asserted
16 claims that would ensure that there would be a vehicle
17 available, and pardon the pun, that there would be a vehicle
18 available to seek emergency relief if that was needed.

19 The other plaintiffs, for whatever reason, made a
20 different decision to enter voluntary stay stipulations.
21 Had the Elliotts been part of those discussions that led to
22 those decisions on the part of the group of plaintiffs, we
23 certainly would've expressed concern about entering any stay
24 in this court that did not include an exception for
25 emergencies.

1 The lack of attention to the real world and human
2 needs of plaintiffs and punitive class members is
3 unfortunate. Mr. Steinberger -- Mr. Steinberg, excuse me,
4 Mr. Steinberg has claimed that our rhetoric about how this
5 Court has closed every courthouse door in America to those
6 driving dangerous vehicles is overblown because we could've
7 come here to seek the loaner car that CEO Barra promised
8 those driving dangerous cars.

9 I believe -- I thought at first that this
10 suggestion was sarcastic on GM's part, but I now understand
11 GM to be actually asserting the claim with a straight face.
12 This Court's May 16th scheduling order, this Court's July
13 11th's scheduling order includes no exception for emergency
14 relief. That's part of what makes it so clear, that this
15 kind of case doesn't belong in this court.

16 I want to speak to one other issue because GM
17 hasn't really engaged the Elliotts' jurisdictional argument.
18 They say, give us more time if you think we need to, this is
19 an assumed issue under threshold issues, et cetera, and, and
20 I just want to point out, Your Honor, that those who are
21 dragged before this Court and barred from prosecuting New GM
22 for its wrongdoing, my understanding is under the July 11th
23 scheduling order, given a mere three days to try to make
24 their arguments as to why this Court may not have
25 jurisdiction over them.

1 New GM filed its motion I think April 21st or
2 22nd. If it wasn't prepared to defend and establish the
3 subject matter jurisdiction of this Court, it shouldn't have
4 dragged the Elliott lawsuit here.

5 New GM -- I'm sorry, Mr. Steinberg has claimed
6 that through some kind of artful pleading we've carefully
7 put our way around this Court's jurisdiction. It's not
8 artful pleading, Your Honor, it's just -- it's claims we
9 assert, you either have jurisdiction over them or you don't,
10 and our position is, of course, that you don't.

11 I'm happy to submit further papers, Your Honor, on
12 the cases that Your Honor mentioned, but I don't have the
13 cases off the top of my head, Your Honor, but I have read
14 them all. And I'm very confident that not a single one of
15 those cases says that this Court has any jurisdiction over
16 the assertion of third party claims against a non-debtor
17 that assert issues of independent duties that that non-
18 debtor, GM, owed to plaintiffs and breaches of those duties.

19 In addition to the Travelers' case and the
20 Manville case, we also have the In Re Old Carco case, the In
21 Re Drewer (ph) case, the In Re Gorman (ph) case that you
22 discussed with the Finiff parties. Each of those --

23 THE COURT: You mean Grumman Olson.

24 MR. PELLER: Pardon me?

25 THE COURT: You mean Grumman Olson.

1 MR. PELLER: Yes, I'm sorry, Grumman Olson.

2 Each of those -- in each of those cases, the
3 relevant courts and particularly in the cases that reach the
4 Second Circuit, the Courts made clear that original
5 jurisdiction can't be expanded to grant immunity against new
6 wrongdoing by the reorganized entity emerging out of the
7 bankruptcy proceedings.

8 New GM is here claiming immunity for all its
9 wrongdoing that it did, not Old GM, it did in concealing
10 material safety risks from my clients, the punitive class
11 members, and consumers across America.

12 We believe that -- we've got fellow plaintiffs
13 here telling this Court don't hear their claims. We've got
14 GM here telling the Court don't hear these claims. We have
15 the Court here questioning why we are not complying with
16 this Court's order. The Elliotts are somewhat isolated,
17 it's true. Luckily, however, Your Honor, subject matter
18 jurisdiction is not a popularity contest.

19 And regardless of the weird conjunction of
20 interests that have put GM and our fellow parties in the
21 same position arguing that we should not be heard, we have
22 faith that we have one important ally on our side, and
23 that's the plain and clear rule of law.

24 This Court has no subject matter jurisdiction over
25 the Elliotts. It's time to free them from this Court's

1 orders, from GM's constant threats that they're going to
2 hold the Elliotts in contempt, and let us go on our way
3 before Judge Furman to try to prosecute our claims.

4 Again, I'll be submitting further papers speaking
5 to the cases that Your Honor asked me to speak to. Thank
6 you.

7 THE COURT: Mr. Steinberg.

8 MR. STEINBERG: Your Honor, I'll be brief. Just
9 to answer your question about whether if there was property
10 damages compared to an accident, where a personal injury was
11 caused on a post-sale incident or accident, the sale
12 agreement is pretty clear that property damage is also
13 covered. Economic losses aren't a property damage.

14 THE COURT: There's also coverage so that if a car
15 gets into a wreck and nobody is hurt, but the car is
16 wrecked, it is covered, that is New GM will write out a
17 check if it's otherwise liable.

18 MR. STEINBERG: It is an assumed liability, yes,
19 Your Honor.

20 Second thing, I was surprised he wanted to talk
21 about Justice Jackson's ruling when he didn't comply with
22 Your Honor's order, but it should be pointed out that
23 Justice Jackson did stay all actions in that D.C. action,
24 pending Your Honor's rulings and Judge Furman's rulings.

25 So he allowed the amended complaint -- she allowed

1 the amended complaint to be filed, but then stayed
2 everything as a way of dealing with the issue.

3 The -- Mr. Peller actually conceded the argument
4 that he was not uniquely situated. He essentially said that
5 the other plaintiffs have raised his type of claim, but they
6 raise other claims as well too. So there's clearly an
7 overlap, it's just not identical. And once he's made that
8 concession that the other plaintiffs will be asserting his
9 claims as well as other types of claims as part of their
10 overall briefing on the threshold issue, then he's admitted
11 that he's not uniquely situated. Only to the extent that he
12 hasn't asserted some of the other claims, but to the extent
13 that there's an overlap, he's conceded that issue.

14 The notion I just want to clarify one thing, is
15 that the notion that Your Honor's orders have foreclosed
16 anybody from seeking relief if there was a safety issue is
17 not true. I had said that there was nothing that foreclosed
18 anybody coming to this court. I'd also suggested that he
19 didn't seem to care whether he came to this Court or to the
20 D.C. Court anyway, when he was looking for something, that
21 he had threatened many times to go to another court and
22 hadn't done it.

23 But the real answer is there's a safety concern
24 relating to the recall, the person to address your concerns
25 were -- are with NHTSA, the National Highway Transportation

1 Safety Administration. They're the ones who supervise the
2 recall. That is, you can't have courts administering a
3 recall in different ways. And the argument is that it has
4 primary jurisdiction over this issue. But he hasn't pressed
5 any of it.

6 He's gotten his ignition switch repaired, and to
7 some extent, we've been trying more than they have, to try
8 to access the car to see whether there are any other issues
9 that are left.

10 The diminution in value, if he wants to argue that
11 his claim is that there was no accident or injury, but a car
12 which at the time of the sale had a defective ignition
13 switch, that post sale the failure to say that there was a
14 defective ignition switch in 2012 versus 2013 versus 2014,
15 which was then repaired, created a diminution in value of a
16 car that he had bought in 2006. If he can try to figure out
17 what that articulation of that claim is, then I think that's
18 something to consider. But then the claim doesn't exist
19 because there's no damages.

20 The -- finally, two final points. One is the
21 three days to respond was a negotiated point with us and the
22 designated counsel, and it could've been five days, it
23 could've been three days. The real point was, is that
24 everybody had said that they agreed that the Court had
25 jurisdiction. They agreed that on the surface of these

1 complaints the motion to enforce had applicability, and they
2 wanted to be able to brief the issue in an orderly fashion.

3 Anybody who was going to challenge it now which is
4 two months after, more than two months after these orders
5 were entered, will have the ability to understand why
6 they're going to challenge it, and they don't need more than
7 one day or two days to be able to assert why they think they
8 should be able to flout this Court's jurisdiction.

9 And finally, all of the precedents that counsel is
10 talking about with regard to non-debtor entities, do not
11 apply in the context where the non-debtor entity is a
12 purchaser, that in order to encourage 363 sales, the public
13 policy of protecting purchasers that they will get what they
14 bargained for in a bankruptcy auction process. And that
15 those parties who bargained for the protection of the
16 bankruptcy court to get the deal that they had negotiated,
17 they're entitled to come back to the Court if they believe
18 they're not getting the deal that they had negotiated. And
19 when the Court reserves jurisdiction to examine that issue,
20 that is not the same case, that is the Manville II case or
21 any of the other type cases.

22 THE COURT: All right. Everybody sit in place for
23 a moment.

24 (Pause)

25 THE COURT: All right. Ladies and gentlemen, I'll

1 issue a written opinion on this in the next day or two, but
2 I'm going to summarize the bases for the ruling by a
3 dictated decision now.

4 Once again, a plaintiff group wishing to proceed
5 ahead of the 88 or more ignition switch plaintiffs whose
6 claims I've already addressed or will be addressing, has
7 asked for leave to go it alone. That request is denied with
8 a single exception.

9 The contentions that are made here don't
10 materially differ from those I addressed in my oral and
11 written opinions in Finiff. And as to that single
12 exception, the contention that I lack subject matter
13 jurisdiction to construe and enforce the sale order, that
14 contention is frivolous.

15 It disregards controlling decisions of the United
16 States Supreme Court in Travelers, the Second Circuit in
17 Petrie Retail and Millennium Sea Carriers, District Court
18 authority by Judge Marrero in Lothian Cassidy, four
19 decisions I personally issued in Sterling Optical, Ames
20 Department Stores, GM UAW and GM Trusky, three decisions by
21 other bankruptcy judges in this district by Judge Drain in
22 Portrait Corporation of America, Judge Gropper in General
23 Growth, and Judge Bernstein in Grumman Olson and, in fact,
24 the leading treatise in the area of Collier.

25 The Elliotts' motion to dismiss for lack of

1 subject matter jurisdiction is likewise denied.

2 Turning first to the subject matter jurisdiction
3 contention. The Elliott plaintiffs say at page 5 of their
4 brief, that because New GM's claims are not "related to" any
5 proceedings before this Court, this Court lacks jurisdiction
6 to stay their lawsuit or to restrict the Elliott plaintiffs
7 in any way.

8 I flatly disagree. That argument misses the
9 point. Related to jurisdiction has nothing to do with the
10 issues here. Bankruptcy courts, and when it matters,
11 district courts, have subject matter jurisdiction to enforce
12 their own orders, or to construe them, under those court's
13 arising in jurisdiction. There are nearly a dozen cases I
14 mentioned a moment ago expressly so hold.

15 As explained in many of those cases, Section 1334
16 of the Judicial Code, and I note for the avoidance of doubt,
17 that's the Judicial Code, not the Bankruptcy Code, we're
18 talking about 28 U.S.C., which immediately follows the
19 provisions of the Judicial Code addressing subject matter
20 jurisdiction in federal question cases, diversity cases, and
21 admiralty cases. Addresses the subject matter jurisdiction
22 of the district courts and hence the bankruptcy courts in
23 matters relating to bankruptcy.

24 As relevant here, it provides that the district
25 courts shall have original but not exclusive jurisdiction of

1 all civil proceedings arise under Title 11 or arising in or
2 related to cases under Title 11. The three types of
3 jurisdiction that district courts, and hence bankruptcy
4 courts have are thus colloquially referred to as arising
5 under jurisdiction, which is a species of federal question
6 jurisdiction, which is not asserted to be applicable here by
7 either side; arising in jurisdiction or related to
8 jurisdiction.

9 The middle one arising in jurisdiction, focuses on
10 whether the claim would or would not have any existence
11 outside of bankruptcy. Matters involving the enforcement of
12 a -- or construction of a bankruptcy court order are in the
13 arising in category as I expressly held in Sterling Optical,
14 Judge Marrero held in Lothian Cassidy and most of the other
15 cases likewise held either expressly or by implication.

16 I dealt with the related two contention in Ames
17 Department Stores, because there too, I got a contention.
18 The contention is mainly raised in the brief, more so than
19 in oral argument, that the outcome of the sale order
20 interpretation would have no effect on the bankruptcy
21 estate.

22 But again, assuming that that's true, it misses
23 the point, because effect on the estate is the standard for
24 related to jurisdiction, and New GM is focusing on arising
25 in jurisdiction, as all of the other litigants who have

1 dealt with the sale enforcement order cases have likewise
2 argued, some of those being New GM in earlier proceedings in
3 which I was asked to enforce the sale order, and in other
4 cases.

5 For instance, the Supreme Court whose opinions
6 state the obvious, they're binding on the lower courts in
7 the United States, said in Travelers, as the Second Circuit
8 recognized, the bankruptcy court plainly had jurisdiction to
9 interpret and enforce its own orders.

10 Second Circuit in Millennium Sea Carriers,
11 bankruptcy courts retain jurisdiction to enforce and
12 interpret their own orders.

13 Nor is it an answer for the Elliott plaintiffs to
14 premise jurisdictional arguments on the conclusion they
15 ultimately want me to reach. That upon construction of the
16 sale order and the sale agreement, their claims would be
17 permissible under each.

18 That may or may not be true. Lawyers with fairly
19 substantial knowledge of bankruptcy litigation will be
20 arguing some or maybe even all of those exact contentions.
21 But the argument that I got now that the procedures before
22 me can be sidestepped, assumes the fact to be decided in the
23 upcoming briefing in this court that the Elliott plaintiffs
24 wish to sidestep.

25 Their argument conflates, it mixes up the

1 conclusion I might reach after analysis of the issues before
2 me, that certain claims ultimately might not be covered by
3 the sale order, with my jurisdiction to decide whether or
4 not they are.

5 So the subject matter jurisdiction argument is
6 rejected, the motion to dismiss for lack of subject matter
7 jurisdiction is denied.

8 Then I reach the issue that the plaintiffs in 86
9 other actions didn't bother to raise, and where in the only
10 exception of Finiff I addressed with the issue in greater
11 length than I'll do here. Obviously, what I said in Finiff
12 will be part of this decision, the expression we use is
13 incorporating it by reference.

14 Like Finiff plaintiffs, Lisa Finiff, Adam Smith
15 and Catherine and Joseph Kabral (ph), the Elliott plaintiffs
16 purchased a car by Old GM. In this case, it was a 2006
17 Chevy Cobalt.

18 The sale order provided, among other things, that
19 except for the assumed liabilities expressly set forth in
20 the sale agreement, New GM would not have any liability for
21 any claim that arose prior to the closing date or as
22 relevant here, relates to the production of vehicles prior
23 to the closing date, or otherwise is assertable against the
24 debtors, or is related to the purchased assets prior to the
25 closing date.

1 I don't need to, and I'm not addressing the extent
2 to which most of the language in that paragraph applies.
3 For the purposes of this, it's sufficient to note that the
4 Elliotts' claim relates to the production of vehicles prior
5 to the closing date.

6 And while they disclaim reliance on Old GM acts,
7 the complaint doesn't bear that out. Though obviously in a
8 lesser degree than in Finiff, the Elliott plaintiffs'
9 complaint also relies on the conduct of Old GM and asserting
10 claims against New GM by reason of Old GM's "unlawful
11 concealment."

12 The language in their complaint to which I'm
13 referring and stating in full, "New GM acquired all the
14 books, records, and accounts of Old GM, including records
15 that document the unlawful concealment of defects in
16 vehicles sold by Old GM prior to New GM's existence."

17 So as in Finiff, I find that the plaintiffs,
18 Elliott plaintiffs are asserting claims with respect to
19 vehicles that were manufactured before the 363 sale. And
20 although to a lesser extent than in Finiff, relying on the
21 conduct of Old GM, the applicability of the sale order has
22 been established in the first instance.

23 Now, that isn't to say that when the bankruptcy
24 litigators who are carrying the sword for the plaintiff
25 community get to be heard in the proceedings in the upcoming

1 weeks, they'll be unable to show areas in which the sale
2 order, after I exercise my sale order jurisdiction, doesn't
3 apply. Or that to the extent it does apply, will be
4 unenforceable in whole or in part.

5 That's exactly why three of the best tort
6 bankruptcy litigation firms in the country were detailed to
7 carry the sword for the plaintiff community. I express no
8 views today on who's going to win in the proceedings yet to
9 be heard in this court.

10 But that is also exactly why the sword will be
11 carried by people who know what they're doing and who are
12 capable of presenting these issues to me and respectfully,
13 don't make frivolous arguments on subject matter
14 jurisdiction.

15 Also, for the reasons that have been stated, even
16 if the sale order didn't apply in the first instance, I
17 would be issuing a preliminary injunction to keep this
18 controversy from proceeding ahead of all of the others for
19 the reasons I stated in the written decision in Finiff.

20 This ruling, to be clear, is without prejudice to
21 any of the arguments to be made on the applicability or
22 enforceability of the sale order and sale agreement in the
23 weeks to follow. It's only about the ability of one
24 plaintiff group to get ahead of everybody else. All of the
25 Elliott plaintiff rights to assert anything on the merits

1 are reserved. Reserved is the expression judges use to say
2 that they have the ability to argue down the road. But the
3 Elliotts are not going to be allowed to raise them ahead of
4 everybody else.

5 Now, just by way of advice although I can't really
6 give legal advice, and not ruling, if as I heard New GM
7 said, it's willing to pick up the Elliotts' car and to look
8 at it and to fix anything that needs to be fixed, the
9 Elliotts might well served to take New GM up on that offer.

10 I'll expressly rule that if they do that, it will
11 be without prejudice to any proceedings before me. Without
12 prejudice is kind of like another way of saying reserved.
13 That means that's not going to be held against them. It's
14 in everybody's interests to get that car safe and running to
15 the extent it isn't safe or running yet. But the Elliotts
16 can't get ahead of everybody else.

17 Mr. Peller, you said at the outset that you're not
18 appearing in any way or acting in your capacity in any way
19 vis a vis the Georgetown Law School. I would appreciate it
20 if you would advise my law clerks of any alternate address
21 that should be placed with respect to your name on the
22 written opinion to follow.

23 New GM is to settle an order in accordance with
24 this ruling after the written opinion has come out. It
25 should be drafted to conform in material respects to the one

1 that I ultimately entered in Finiff as contrasted to the one
2 that was originally provided to me as part of the original
3 notice of settlement.

4 For the avoidance of doubt, the time to appeal
5 from my determination will run from the time of entry of the
6 order to be entered and not from the time that I'm today
7 dictating this oral summary of decision.

8 Not by way of reargument, do we have any open
9 issues? Mr. Peller?

10 MR. PELLER: Your Honor, the plaintiffs would like
11 to be heard on the issue of the factors relevant to the
12 entry of the injunction. You have made findings in the
13 Finiff in the July 2nd hearing with respect to the risk of
14 inconsistent litigation and findings, et cetera, but we
15 would wish to be heard on that.

16 THE COURT: That's denied. You've had full and
17 fair opportunity to be heard here, Mr. Peller.

18 MR. PELLER: Okay.

19 THE COURT: All right. Mr. Steinberg?

20 MR. STEINBERG: Nothing further from us, Your
21 Honor.

22 THE COURT: All right. We're adjourned.

23 (Proceedings concluded at 11:20 AM)

24 * * * * *

25

I N D E X

R U L I N G S

IDENTIFICATION

PAGE

Plaintiffs Lawrence and Celestine Elliott's

49

No Stay Pleading Pursuant to the Court's

Scheduling Orders and Motion for Order of

Dismissal for lack of Subject Matter Jurisdiction

and for related relief (technical corrections

to Doc. 12772 with exhibits attached) (ECF 12774)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I, Sheila G. Orms, certify that the foregoing is a
correct transcript from the official electronic sound
recording of the proceedings in the above-entitled matter.

Dated: August 6, 2014

**Shelia G.
Orms**

Digitally signed by Shelia G. Orms
DN: cn=Shelia G. Orms,
o=Veritext, ou,
email=digital@veritext.com, c=US
Date: 2014.08.06 09:55:22 -04'00'

Signature of Approved Transcriber

Veritext

330 Old Country Road

Suite 300

Mineola, NY 11501